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MM Docket 92-266

COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION

June 29, 1994

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the	)	MM Docket 92-266
Cable Television Consumer	)	
Protection and Competition	)	
Act of 1992	)	
	)	
Rate Regulation	)	

COMMENTS OF THE CABLE TELECOMMUNICATIONS  
ASSOCIATION

1. The Cable Telecommunications Association ("CATA"), hereby files comments in the above-captioned proceeding. CATA is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 60 million cable television subscribers. CATA files these comments on behalf of its members who will be directly affected by the Commission's action.

Introduction

2. In these comments, CATA addresses the issue of determine appropriate rates for the addition of channels to the existing carriage complement of cable systems -- the "going forward" issue, and the question of whether to permit cable systems to charge higher rates for commercial subscribers.

We argue that the current approach to "going forward" is flawed and that the Commission should permit systems to recover programming costs plus a fixed amount of profit for each additional channel added to a tier of service. In addition, even under such a program, we urge the Commission to acknowledge the special difficulties faced by small cable systems by adopting a sliding scale of profit that would enable a small system to recover the non-programming costs that must be spread over a small subscriber base.

3. CATA also contends that the Commission's determination commercial rates intended to be regulated is in error; that indeed higher rates may be charged to subscribers who make use of cable services for profit. Moreover, we believe that higher commercial rates should not be used to offset residential subscriber rates.

Going forward issues: The Commission should permit the recovery of programming costs plus a fixed amount of profit for each additional channel of cable service.

4. In its Fifth Notice of Proposed Rulemaking in this proceeding the Commission has again posed the problem of how, under its regulations for establishing cable television rates, it is to deal with the addition or deletion of channels to regulated tiers.

In each of the two schemes for rate regulation thus far, the Commission has taken a static view of cable service tiers and, noting that the value of channels tended to decrease as the number of channels increased, mandated lower per-channel charges for larger capacity systems. In some cases, under the Commission's original set of rate regulations, systems might actually have had an incentive to replace more costly channel services with less expensive channels because the per-channel charge was no longer worth the system's programming costs.

5. The problem of system expansion has been exacerbated in the latest approach to "going forward." By applying the same "downward" curve it used in its benchmark formula, the Commission has found itself trapped in mathematics that yields unacceptable results. Now, if a system is carrying many channels, the addition of one or two more becomes virtually worthless. The ability to recover costs, plus pennies, plus a 7.5 percent mark-up, does not provide the incentive to add channels.

6. The Commission has recognized that for systems with large channel capacities, its design for rates that may be charged for the addition of channels is flawed, and has raised this issue in its Notice. But it is clear that the problem is more pervasive.

Systems with fewer regulated channels are also disadvantaged. It is only for cable systems with the fewest number of channels that the Commission's "per-channel adjustment factor" begins to approach a concept of profit (and, as we note below, for these systems, the equipment costs associated with adding channels must be spread out over a very small number of subscribers and so it is not really clear that they will profit either). Fifty-seven percent of cable systems have capacities of between 30 and 53 channels (See Warren Publishing, Inc. Television & Cable Factbook, Services Volume No. 62, 1994). Assuming, for the sake of argument, that virtually all of this capacity is used for regulated services, and a system adds a channel, the channel adjustment factor is five cents. If the average cost of programming may be roughly estimated at 25 cents per month, per subscriber, then an operator would be able to charge 30 cents with a profit of 7.5 percent, or an additional 2.25 cents a month. Thus, for the vast majority of systems, there would be no incentive to add any but the most costly channels. This cannot be what the Commission had in mind.

7. CATA believes that a simpler and more workable scheme would be to permit systems to recover programming costs, plus a flat amount per channel added. This amount should be designed not only to recover the system's non-programming costs in adding channels, but also, to provide a reasonable profit to provide an incentive for offering added services.

Depending on the size of their systems, CATA members have suggested that a figure of between 25 and 50 cents per channel would be reasonable. Because of the disinclination to raise rates substantially in any given year, market forces would tend to keep this "profit" within a reasonable range. As an alternative, the Commission might impose a cap on the amount that could be charged in a given period of time.

8. Adopting a fixed amount of profit for each additional channel, the Commission can largely ignore its concern over how to determine charges for systems that are "capped" at 100 channels. This issue has arisen only because the present regulations cannot deal with these very large channel numbers. A fixed amount allows systems to add channels without running afoul of the peculiar postulates of "benchmark mathematics" that, if carried to a logical conclusion, would, at some number of channels require an operator to pay money rather than receive it for providing additional services.

The Commission should adopt a sliding scale for small systems.

9. Assuming the Commission permitted sufficient profit for adding channels, systems of all sizes would have the incentive to expand their services for their own benefit and the benefit of their subscribers.

Special attention, however, should be paid to small systems. Adding channels requires the purchase of equipment. The money to pay off debts associated with equipment purchases must come from the additional fees charged subscribers before reasonable profits can be realized. The equipment costs are fixed. Thus, the smaller the number of subscribers, the less profit there is for the cable operator, and the less incentive to add channels.

10. From conversations with its members, CATA has determined that the following equipment costs are among those typically associated with the addition of satellite delivered channels: \$500 to \$1000 for a receiver to convert from satellite frequencies to video baseband, \$800 for a descrambler, and \$1250 (low end) for a signal processor. Labor costs vary depending on various factors including whether existing satellite dishes have to be re-tuned. An additional dish, if required, costs approximately \$2500. Thus, depending on the circumstances, the addition of another satellite channel can cost between \$2500 and \$5000.

11. Assuming a cable system has 1000 subscribers, half of whom subscribe to a tier of satellite programming, a "profit" of 25 cents a month per subscriber for an additional channel on the satellite tier will yield \$125.00.

This is the amount that must be used to pay a debt of between \$2500 and \$5000 for equipment, before real profit is ever realized. Assuming equipment costs at the low end, it will take almost two years. If a system has only 100 subscribers with no tiers (the most common situation for stand alone very small systems), then the monthly profit will be \$25.00. But because equipment costs are the same, it would take more than eight years to pay the equipment costs. Even if the permissible profit for an additional signal were 50 cents per subscriber per month, it would still take more than 4 years to pay for the equipment.

12. If smaller systems are to be given the incentives to improve their product by adding channels, then it is clear that, even if the Commission adopts a flat profit figure for the addition of channels generally, special consideration must be given to the small systems. CATA suggests that for such systems the Commission adopt a sliding scale that would permit higher charges as the number of subscribers decreases between 1000 and 100. Otherwise, in order to recover the costs of adding even a few channels, small systems will be forced into cost-of-service proceedings, surely not a preferred approach for any system that simply wishes to add a new program service.

Special commercial rates should be allowed without an offset.

13. Having decided that it would not permit special rates for commercial service, the Commission now inquires whether it might be reasonable to permit higher commercial rates if they could be used to offset residential rates. CATA submits that commercial rates should be allowed, and there should be no offset.

14. In its Second Order on Reconsideration the Commission explained that "neither the Cable Act nor its legislative history evinces an intent [that the Commission permit higher rates for commercial establishments]." We respectfully suggest that neither the Cable Act nor its legislative history evinces an intent that the Commission not permit such rates. Given its history, it is clear that the Cable Act, taken as a whole, was designed clearly to regulate the rates and services for residential subscribers. There is no suggestion that the Act was ever intended to regulate rates charged to businesses that intended to use the product supplied by cable systems for their own profit. Indeed, if cable service is to be used for profit, then it is only reasonable that systems not be restrained from charging more. The Commission is bound by no rule of statutory construction that would prevent it from permitting higher commercial rates. It has simply chosen not to do so.

15. If one considers the provision of cable service for the profit of another to be an unregulated activity, then there is no more justification for requiring it to cross-subsidize residential users than there is for any other unregulated cable service to cross-subsidize residential users. Even if the Commission continues to believe that the provision of cable service for commercial purposes was intended to be regulated under the Cable Act, its suggestion that higher commercial earnings might be used in their entirety to subsidize residential service is confusing. Assuming the Commission permits higher rates for commercial establishments, surely it would be because they are making use of the cable service for their own profit, not merely because the Commission sees an opportunity to cross-subsidize residential users.


#### Conclusion

16. CATA maintains that the most reasonable method of regulating rates charged for the addition of channels to a regulated tier of cable service would permit the recovery of program costs plus a fixed amount designed to recover non-program expenses and generate sufficient profit to create an incentive for a cable operator to provide additional services. At the same time, we urge that for small cable systems, whose costs must be spread over smaller subscriber bases, the Commission should adopt a sliding profit scale.

17. CATA also contends that special rates for commercial use of a cable system's services were not intended to be regulated, and that where cable service is used for a subscriber's profit, it is reasonable that higher rates may be charged. Because commercial service was not intended to be regulated, higher commercial rates should not be used to offset rates charged to residential subscribers.

Respectfully submitted,

THE CABLE TELECOMMUNICATIONS  
ASSOCIATION.

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